

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1845 S Poplar Avenue, 157' of * ZONING COMMISSIONER
2/1 North Point Road * OF BALTIMORE COUNTY
(7614 Poplar Avenue) *
12th Election District * Case No. 88-284-SPH
7th Councilmanic District *
Joan Bruffey *
Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests approval of a nonconforming use for a contractor's storage yard and building (office) for a plumbing company, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, Joan Bruffey, appeared and testified. She was supported in her testimony by Mr. Vince. The following Protestants appeared and testified: Mrs. Kivisto, Mr. Powell and Mr. Cox.

The Petitioner claims that the subject site has been continuously used as a plumbing contractor's yard since prior to 1940.

The evidence tends to show that the original plumbing business was begun in 1937 by Mr. Jack Griffith. He owned the house at 7614 Poplar Avenue and operated his plumbing business from the building he constructed on the rear of that lot. He sold the business to Mr. James Bruffey in 1959.

Mr. Bruffey operated a plumbing business from this location from 1959 thru 1974. After Mr. Bruffey's death, the Petitioner, Joan Bruffey, his wife, sold the business, but not the land to Mr. Vince. Mr. Vince had been an employee of Mr. Bruffey and had worked for the plumbing business. The business has continued until the present time under his management.

Mrs. Bruffey testified that she personally worked in the plumbing business from 1955 until 1974. That the plumbing companies of Griffith, Bruffey and Vince have all been about the same size and scope of operation.

2. The Petitioner shall not have more than five (5) plumbing trucks on the site or serviced by the site for his plumbing business.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER OF
BALTIMORE COUNTY

JRH:mm
cc: Peoples Counsel

The Protestants testified at great length to the problems created by the plumbing business. They all stated that the traffic problems are very bad and the parking on Poplar Avenue by plumbing trucks make the street unsafe. There were several complaints about the Protestants that reside in the house at 7614 Poplar Avenue.

Mrs. Kivisto also expressed concern for the safety of the school children, because the school buses cannot get by the plumbing trucks parked along the street. She is very displeased with the amount of trash and debris stored on the site. Mrs. Kivisto stated that she has lived near the subject property since the 1930s. She testified the first garage was built in 1938 by Jack Griffith and was used by him as part of his plumbing business. She believes the sign was added in the 1950s.

Mr. Powell stated he agreed with all the complaints listed above, but wished to add that there are too many cars parked all over the yard. He believes the plumbing company has expanded greatly since the 1950s when he moved in. He stated that all the buildings were there, but there were only three trucks in use, when Mr. Griffith owned the business.

Mr. Cox testified in agreement with the other Protestants. He stated he moved to the area in 1976. The number of employees and trucks have increased every year. He stated this is not a small plumbing business, but a large plumbing company. He does not want this large business in the residential area. He said it is the source of rats and trash.

The Protestants' Exhibits 2 and 3 both request that the Zoning Commissioner not rezone the property. As I stated at the hearing, I have no legal authority to rezone this property. This is a petition for a nonconforming use. That means the use was present prior to the adoption of the Baltimore County Zoning Regulations (B.C.Z.R.).

- 2 -

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a nonconforming use on the property known as 7614 Poplar Ave., Baltimore, Maryland-21224, for the following reasons: the property has been used continuously since before 1940 until the present as a contractor's storage building, storage yard, plumbing; and other contracting businesses; office; parking for vehicles connected with the use & customers of the business, and a large roof sign.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing, advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:	Legal Owner(s):
W/A _____	Joan Bruffey
(Type or Print Name)	(Type or Print Name)
Signature _____	Signature _____
Address _____	(Type or Print Name)
City and State _____	Signature _____

Attorney for Petitioner:

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 41666

Amount _____
Date _____

DATE _____ ACCOUNT _____
AMOUNT \$ _____
RECEIVED FROM _____
FOR _____

Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock

J. Robert Haines
Zoning Commissioner of Baltimore County.

The Baltimore County Zoning Regulations (B.C.Z.R.) establishes a nonconforming use in Section 104.11:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used." (B.C.Z.R., 1955; Bill No. 18, 1976)"

The Maryland Court of Special Appeals in *Murphy v. Baltimore County*, Maryland 39 Md. App 257, 385 A2d 96 (1978) has established that the following factors should be reviewed in determining the scope of an activity in a nonconforming use case:

(1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
(2) is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;
(3) does the current use have a substantially different effect upon the neighborhood;
(4) is the current use a "drastic enlargement or extension" of the original nonconforming use."

Therefore, the issue is not rezoning, but a continuation of a commercial use that has been present on the property since prior to 1945. The Zoning Commissioner is not empowered to review this project for its propriety and desirability upon this site. The issue is whether or not it is a nonconforming use.

- 3 -

Phone: 687-6922

ZONING DESCRIPTION
FRANK S. LEE
Registered Land Surveyor

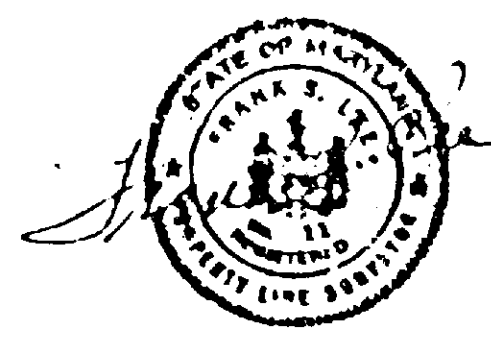
1277 NEIGHBORS AVE. - BALTIMORE, MD. 21217

September 1, 1987

No. 7614 Poplar Avenue
Lot 4, Section "C", Eastern Heights, 5/83 A
12th District Baltimore County, Maryland

Beginning for the same on the northwest side of Poplar Avenue at the distance of 157.20 feet measured southwesterly along the northwest side of Poplar Avenue from the south side of North Point Road and being known and designated as Lot 4, Section "C" as laid out on the plat of Eastern Heights, said plat being recorded among the land records of Baltimore County in Plat book 5 folio 83.

Containing 7500 Square feet of land.



The issue is whether or not the plumbing business has been in continuous operation on this site from, at least, January 1, 1945. The answer, which is clearly set forth in both the testimonial and documentary evidence presented at the hearing, is yes.

The testimony of Mrs. Kivisto and the Petitioner tend to establish an ongoing plumbing operation since the late 1930s. This testimony is supported by Petitioner's Exhibits 2 and 3. There is no evidence of any lapse in the business operation of more than one year.

I agree with the Protestants that a plumbing business and/or a plumbing contractor's yard operating in a residential neighborhood, is not desirable. Also, Baltimore County, in 1945, agreed that a commercial use should not be conducted in a residential community. The B.C.Z.R. make this very clear.

The issue here is nonconforming, not desirability. The fact is this lot is nonconforming as that term is defined and used in the B.C.Z.R.

Pursuant to the advertisement, posting of the property and public hearing held and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of March, 1988, that the relief requested in the Petition for Special Hearing to approve a nonconforming use for the property known as 7614 Poplar Avenue and, more particularly described in Petitioner's Exhibit 1, as a plumbing contractor's storage yard, be and is hereby GRANTED, subject to the following conditions:

1. The Petitioner shall not expand this plumbing operation in area of the lot beyond the buildings shown on Petitioner's Exhibit 1, except as provided in Section 104 of the B.C.Z.R.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 12th Date of Posting: 1/9/88
Posted for: Special Hearing
Petitioner: Joan Bruffey
Location of property: 7614 Poplar Ave. 12th District, Baltimore County, Maryland
Location of Sign: 7614 Poplar Ave. 12th District, Baltimore County, Maryland
Remarks: None
Posted by: J. Robert Haines Date of Return: 1/10/88
Number of Signs: 1

CERTIFICATE OF PUBLICATION

OFFICE OF
Dundalk Eagle

4 N. Center Place
P.O. Box 8936
Dundalk, Md. 21222

January 11, 1988

THIS IS TO CERTIFY that the annexed advertisement of Robert Haines in the matter of Zoning Hearings - Case No. 88-284-SPH - P.O. 195544 - 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 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1247th, 1248th, 1249th, 1250th, 1251st, 1252nd, 1253rd, 1254th, 1255th, 1256th, 1257th, 1258th, 1259th, 1260th, 1261

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
Zoning Supervisor
Date: 8-19-87

FROM: James Thompson
Zoning Enforcement Coordinator

SUBJECT: Item No. 88-62 (if known)
Petitioner: (if known)

VIOLATION CASE # 88-62
LOCATION OF VIOLATION 714 Poplar Ave.
DEFENDANT Tom Bruffey ADDRESS 324 Eda Ave
Baltimore, MD 21221

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME ADDRESS
LARRY COX 7602 Poplar Ave 21224

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

CPS-008

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3354

October 16, 1987



Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Zoning Commissioner:

The Bureau of Traffic Engineering has no comments for items number 120, 121, 122, 123, 124, 125, 128, and 129.

Very truly yours,

Michael S. Flanigan
Traffic Engineer

MSF:sb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines
TO: Zoning Commissioner
Date: December 9, 1987

Norman E. Gerber, AICP
FROM: Director of Planning and Zoning

Zoning Petitions No. 88-314-SPH,
SUBJECT: 88-274-SPH, 88-284-SPH

In view of the subject of this hearing, this office offers no comment.

Norman E. Gerber, AICP
Director

NEL:JCH:dme

cc: Ms. Shirley M. News, Legal Assistant, People's Counsel
File

CPS-008

TO THE ZONING COMMISSIONER FOR BALTIMORE COUNTY:

I knew Mr. Jack Griffith, former owner of the property known as 7614 Poplar Avenue, Colgate, Maryland 21224 from the 1930's until his death in the middle of the 1950's. He was engaged in the Plumbing - Contracting business and operated from his home property on Poplar Avenue. After his death his estate sold the property to an employee, Mr. James Bruffey who thereafter rented out the home and operated the business from the yard and the shop to the rear of the property. His widow, Joan Bruffey, continues to rent the house as a residence for a tenant and rents the shop and yard to Mr. Bruffey's longtime employee, Mr. Warren Vince, who to this day operates a contracting-plumbing business from the 7614 Poplar Avenue location. Since the time I first became acquainted with Mr. Griffith and became aware of his business operation at the Poplar Avenue location in the 1930's, the property has continuously been used as a residence and a Contractors-Plumbers place of business, all to the present day.

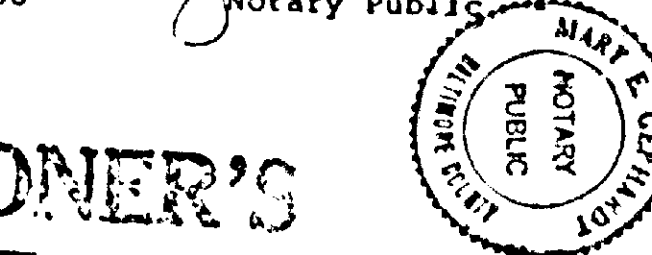
Gilbert Martin
527 Franklin Avenue
Baltimore, Maryland 21224

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I hereby certify, that on this 21st day of January, 1988, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Gilbert Martin known to me (or satisfactorily proven) to be the person whose name(s) is/are subscribed to the within affidavit, and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

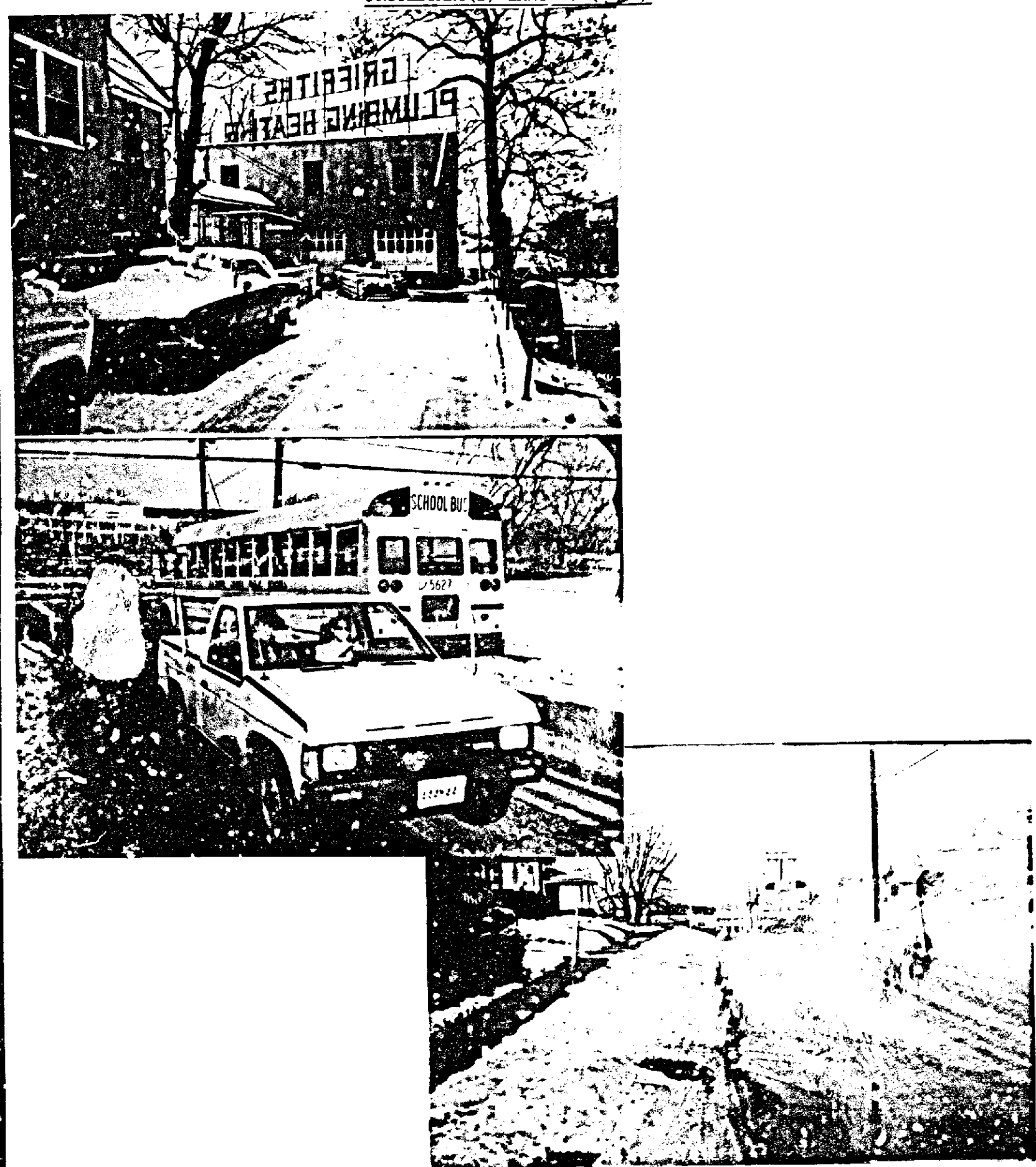
In Witness Whereof, I hereunto set my hand and official seal.

My commission expires: 7/1/90



PETITIONER'S
EXHIBIT 3

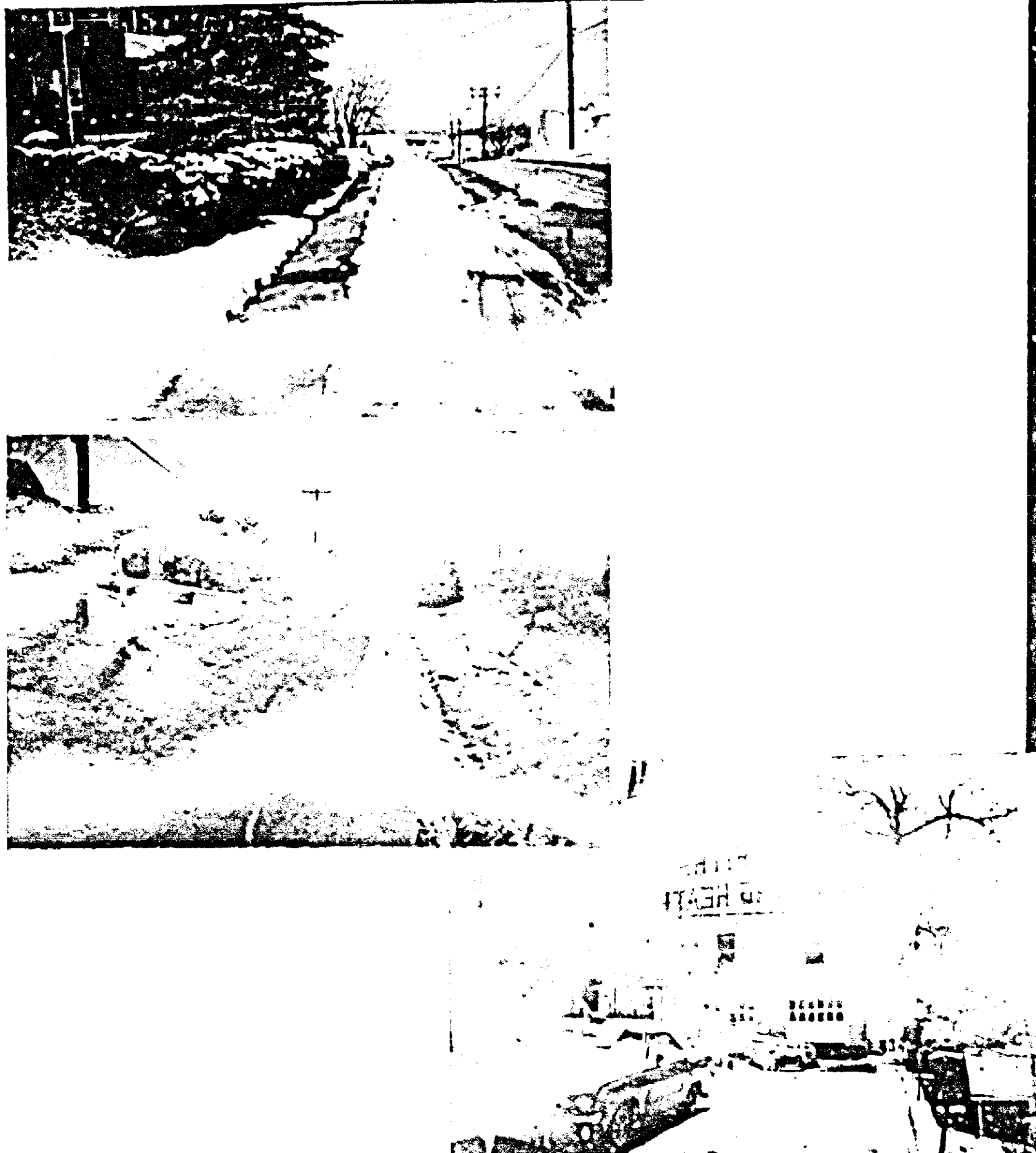
PROTESTANT(S) EXHIBIT (1)



PROTESTANT(S) EXHIBIT (1)



PROTESTANT(S) EXHIBIT (2)



Mr. Zoning Commissioner or Mrs. Zoning Commissioner:

I, hereby make the following statement all from personal knowledge:

Mr. Jack Griffith was my friend, and my father's friend. Jack did plumbing and repair work for me and my father. Many times, we would contact him at his Poplar Avenue home to report a leak or for new work on our houses - he operated from his home property on Poplar Avenue, Colgate, from the mid 30's until his death in the middle 50's at which time Mrs. Griffith sold the property to his employee Jim Bruffey. She moved out and the former employee Mr. Bruffey rented the house and continued to operate the contracting-plumbing business from the rear shop and to my knowledge a former employee of the deceased Mr. Bruffey operates the same type of business, plumbing and contracting, from the rear of the property and the old home place still is used as a residence, but I do not know the tenants name or names. And the sign put up by Mr. Griffith still stands.

Respectfully,
Daniel W. Hubers
1520 Old Eastern Avenue
Baltimore, MD 21221

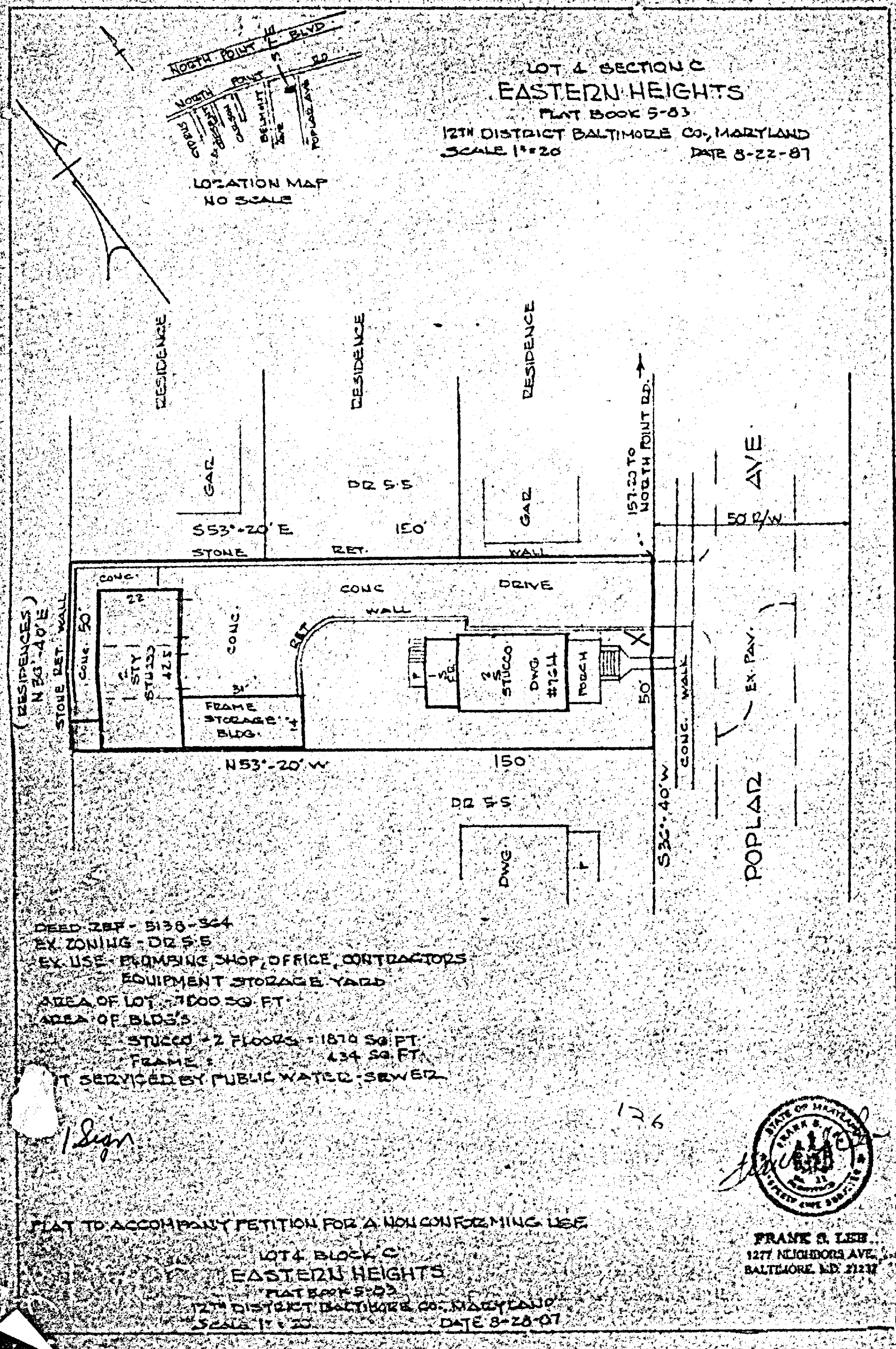
I, hereby make affidavit as to the truth of the foregoing statement. Subscribed and sworn before me, a Notary Public in and for the State of Maryland, County of Baltimore this 13th day of January 1988.

May J. S. Hubers
Notary Public



PETITIONER'S
EXHIBIT 2

RECEIVED
CLERK OF WILLS



TO: THE ZONING COMMISSIONER OF BALTIMORE COUNTY

We the undersigned residents of Baltimore County, Eastpoint area do emphatically oppose the rezoning of Property known as 7614 Poplar Avenue from residential to commercial as such use would make the area unsightly, increase traffic, raise the noise level, attract vermin and otherwise create a hazard to neighborhood children.

NAME	ADDRESS	ZIP
Keith & Donna Shedd	7608 Poplar Ave	21224
John & Ruth Shedd	7607 Poplar Ave	21224
Mark C. Howard	7615 Belmont Ave	21224
Verly Wangerman	818 Old North Point Rd	21224
Nancy Mealey	7504 Poplar Ave	21224
Mr. Elmer Henry	7502 Poplar Ave	21224
Mr. Vince Brion	7434 Poplar Ave	21224
Dieter Pauline	7409 Poplar Ave	21224
William Martin	7406 Poplar Ave	21224
Charles Lambuth	7411 Poplar Ave	21224
Chap. A. Clarke	7609 Poplar Ave	21224
Mr. & Mrs. J. P. Smith	7508 Poplar Ave	21224
Mr. & Mrs. J. P. Smith	7600 Poplar Ave	21224
Myra & Walter Kish	7611 Poplar Ave	21224
Larry D. Cox	7602 Poplar Ave	21224

PROTESTANT'S
EXHIBIT 2

TO: THE ZONING COMMISSIONER OF BALTIMORE COUNTY

We are here to oppose the rezoning of the property known as 7614 POPLAR AVENUE from residential to commercial as such use would make the area unsightly, increase traffic, raise the noise level, attract vermin and otherwise create a hazard to neighborhood children.

We have a elementary school on POPLAR AVENUE and we do not need the extra traffic that a commercial business will bring with customers and more employees. POPLAR AVENUE is a narrow road, a school bus and car can barely pass now. Parking is a premium. Often in the morning and early evenings, trucks and cars are parked in front of said property causing a traffic problem. Drivers have to yield to one another just to get by.

We believe MRS. BRUFFEY contends that "the property has been used for parking for vehicles connected with the use of business and for customers of the business". The employees do not park at the place of business. They park in front of the residents homes on POPLAR AVENUE or around the corner on ELTON AVENUE.

Even though MRS. BRUFFEY owns the property, she does not live near POPLAR AVENUE. We believe she rents the property to a contractor who neither lives near the said property. 7614 POPLAR AVENUE.

Therefore, why should the residents be burden and penalized with a commercial business in a residential neighborhood. Even though this business has been going on for years does not make it right or just. It has just been brought to light.

PROTESTANT'S
EXHIBIT 3